

ARTICLE VIII

ENFORCEMENT

30-8-1 VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Article and by State law.

30-8-1.1 Development Without Permit

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificates, or other forms of authorization as set forth in this Ordinance.

30-8-1.2 Development Inconsistent With Permit

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

30-8-1.3 Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the City Council or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

30-8-1.4 Use in Violation

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this Ordinance or any other regulation made under the authority conferred thereby.

30-8-1.5 Subdivide in Violation

To subdivide land in violation of this Ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this Ordinance and recorded in the Office of the County Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

30-8-1.6 Continue a Violation

To continue any of the above violations is a separate and distinct offense.

30-8-2 INSPECTIONS AND INVESTIGATIONS

30-8-2.1 General

(A) Inspections: The Enforcement Officer shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the City at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

(B) Investigations: The Enforcement Officer shall have the power to conduct such investigations as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance and, for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

(C) Supporting Documentation: The Enforcement Officer shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

30-8-2.2 Soil Erosion and Sedimentation Control

(A) Inspections: Agents, officials, or other qualified persons authorized by the City will periodically inspect the sites of land-disturbing activity to determine compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the activity is being conducted in accordance with an approved plan and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.

(B) Investigations: The City shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the City who requests entry for purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

(C) Supporting Documentation: The City shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(D) Property Owner Responsible: Failure of the Enforcement Officer to observe or recognize conditions which violate the intent and purpose of this Ordinance, or to deny the issuance of a grading permit, shall not relieve the property owner from responsibility for the condition or damages resulting therefrom and shall not result in the City, its officers, or agents being responsible for conditions or damages resulting therefrom.

30-8-3 ENFORCEMENT PROCEDURE

When the Enforcement Officer or his agent finds a violation of this Ordinance, it shall be his duty to

notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

30-8-3.1 Notice of Violation

If the owner or occupant of the land, building, structure, sign, or use in violation fails to take prompt corrective action, the Enforcement Officer shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (A) that the land, building, structure, sign, or use is in violation of this Ordinance;
- (B) the nature of the violation, and citation of the Section(s) of this Ordinance violated;
and
- (C) the measures necessary to remedy the violation.

30-8-3.2 Appeal

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Enforcement Officer to the Board of Adjustment (unless this Ordinance has specified that another board shall hear the appeal of the violation) within fifteen (15) days following the date of the Notice of Violation. The Board of Adjustment, or other designated board, shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of the Enforcement Officer shall be final.

30-8-3.3 Notice of Decision

The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

30-8-3.4 Failure to Comply with Order

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section 30-8-4 (Remedies).

30-8-4 REMEDIES

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

30-8-4.1 Injunction

Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

30-8-4.2 Civil Penalties

Any person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 30-8-5 (Civil Penalties - Assessments and Procedures).

30-8-4.3 Denial of Permit or Certificate

The Enforcement Officer shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

30-8-4.4 Conditional Permit or Temporary Certificate

The Enforcement Officer may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

30-8-4.5 Stop Work Orders

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Enforcement Officer may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160A-421 or the NC Building Code.

30-8-4.6 Revocation of Permits or Certificates

The Enforcement Officer may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked.

30-8-4.7 Criminal Penalties

Any violation of this Ordinance shall be a misdemeanor or infraction as provided by NCGS 14-4, subject to a maximum fine of \$500.

30-8-5 CIVIL PENALTIES - ASSESSMENTS AND PROCEDURES

30-8-5.1 Responsible Parties

The owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held

responsible for the violation and subject to the civil penalties and remedies provided herein.

30-8-5.2 Notice

No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with Section 30-8-3.1 (Notice of Violation). If after receiving a notice of violation under Section 30-8-3.1, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the same manner as of a Notice of Violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of the citation.

30-8-5.3 Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

30-8-5.4 Penalties

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in the amount of \$50.00 for the first violation, \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.

30-8-5.5 Demand for Payment

The Enforcement Officer shall make written demand for payment upon the owner or the person in violation and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

30-8-5.6 Nonpayment

If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel to institute a civil action for recovery of the civil penalty. Moreover, if the civil penalty is not paid within the time prescribed, the Enforcement Officer may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

30-8-6 CIVIL PENALTIES - SOIL EROSION AND SEDIMENTATION CONTROL

30-8-6.1 General

Any person who violates any provision of Section 30-7-4 (Soil Erosion and Sedimentation Control), the Act, or rule or order adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity (for which a soil erosion and sedimentation control plan is required) not in accordance with the terms, conditions, and provisions of an approved soil erosion and sedimentation control plan, shall be subject to a civil penalty. No civil penalty shall accrue in excess of \$500 per day, in addition to the penalty for failure to submit a soil erosion and sedimentation control plan as provided in Section 30-8-6.5 (Soil Erosion and Sedimentation

Control Plan).

30-8-6.2 Notice of Violation

No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. However, no time period for compliance need be given for failure to submit a soil erosion and sedimentation control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation.

30-8-6.3 Notice of Assessment

The Enforcement Officer shall determine the amount of the civil penalty to be assessed under this subsection, shall make written demand for payment upon the person in violation, and shall set forth in detail a description of the violation for which the penalty has been imposed. In determining the amount of the penalty, the Enforcement Officer shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice. If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to the city attorney for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the penalty. Such civil actions must be filed within three (3) years of the date the final decision was served on the violator.

30-8-6.4 Specific Civil Penalties

Civil penalties for specific violations of Section 30-7-4 (Soil Erosion and Sedimentation Control) shall be assessed as follows:

(A) Grading Without Permit: \$500 per day for failure to secure a valid grading permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.

(B) Failure to Protect: \$500 per day for failure to take all reasonable measures to protect public property or private property, including lakes and/or natural watercourses, from damage caused by land-disturbing activities.

(C) Failure to Follow Plan: \$300 per day for failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.

(D) Failure to Install Devices: \$500 per day for failure, when more than one acre is disturbed (\$250 per day when one acre or less is disturbed), to install erosion and

sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.

(E) Failure to Maintain Measures: \$300 per day for failure to maintain satisfactory erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm.

(F) Failure to Maintain Temporary Measures: \$250 per day for failure to maintain temporary erosion and sedimentation control measures and facilities during the development of the site.

(G) Failure to Maintain Slopes: \$250 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate erosion and sedimentation control devices or structures.

(H) Failure to Cover Slopes: \$250 per day for failure, within thirty (30) days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.

(I) Failure to Plant Cover: \$250 per day for failure on a tract when more than one contiguous acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within thirty (30) working days or one hundred and twenty (120) calendar days, whichever is the shorter, following completion of construction or development.

(J) Failure to Revise Plan: \$250 per day for failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.

(K) Failure to Maintain Buffer: \$250 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

(L) Interference with Official Duties: \$500 per day for obstructing, hampering, or interfering with any authorized agent of the City or the Sedimentation Control Commission while in the process of carrying out his official duties.

30-8-6.5 Soil Erosion and Sedimentation Control Plan

Any person who fails to submit a soil erosion and sedimentation control plan as required by this Ordinance shall be subject to a single, noncontinuing civil penalty of not more than \$1,000. Any person may be subject to additional civil penalties for violation of any other provision of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance. Civil penalties assessed under this section are considered restorative; intended to provide compensation to the City for costs associated with the City's program to monitor, control, prosecute, cure and/or correct the violation. As such, the amount declared herein is presumed to provide sufficient restoration to the City for its costs.

The assessment of civil penalties herein is not intended to be an exercise of powers delegated to other agencies or entities created by the General Assembly to regulate the proscribed conduct.

30-8-6.6 Civil Penalty Use

Civil penalties collected for erosion and sedimentation control violations shall be used or disbursed as directed by NCGS 113A-64(a).

30-8-6.7 Appeals

An appeal of the Enforcement Officer's assessment may be taken to the Board of Adjustment. Such appeal shall be filed in writing with the Enforcement Officer not more than fifteen (15) days after such receipt of written notice. The Enforcement Officer shall forthwith transmit to the Board all records upon which the action appealed from was taken. The Board shall hold a hearing thereon and render a final decision on the penalty.

30-8-7 CRIMINAL PENALTY - SOIL EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed ninety (90) days, or by a fine not to exceed \$5,000, or both.

30-8-8 INJUNCTIVE RELIEF - SOIL EROSION AND SEDIMENTATION CONTROL

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the City, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Guilford County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this Section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

30-8-9 OTHER POWERS AND ACTIONS

30-8-9.1 State and Common Law Remedies

In addition to other enforcement provisions contained in this Article, the City Council may exercise any and all enforcement powers granted to it by State law or common law.

30-8-9.2 Previous Enforcement

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

30-8-10 REMEDIES - CUMULATIVE AND CONTINUOUS

30-8-10.1 Cumulative Violations

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

30-8-10.2 Repeat Violations

If an owner or occupant repeats the same violation within a five (5) year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.